No. 16565

In the United States Court of Appeals for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

GREAT FALLS EMPLOYERS' COUNCIL, INC., RETAIL FOOD DEALERS DIVISION, AND ITS MEMBER EMPLOYERS, BUTTREY FOODS, INC., SAFEWAY STORES, INC., PAUL A. MATTEUCCI, D/B/A MATTEUCCI'S SUPER SAVE MARKET, PAUL A. MATTEUCCI, D/B/A SOUTHGATE SUPER SAVE MARKET, JOHN EUSTANCE, D/B/A WHITE HOUSE GROCERY, ROBERT NOBLE AND JOHN H. NOBLE, D/B/A NOBLE MERCANTILE COMPANY, E. R. FJELSTAD, D/B/A AL'S FOOD MARKET, AND WALLACE ANDERSON, D/B/A WALLY'S SUPERETTE, RESPONDENTS

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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JURISDICTION

This case is before the Court upon petition of the National Labor Relations Board for enforcement of its order (R. 92–94) [1] issued against respondents on

[1] References to the printed record are designated "R." References preceding a semi-colon are to the Board's findings; those following are to the supporting evidence.

April 29, 1959, following proceedings pursuant to Section 10(c) of the National Labor Relations Act, as amended (61 Stat. 136, 65 Stat. 601, 72 Stat. 945, 29 U.S.C., Sec. 151, *et seq.*), hereinafter called the Act.[2] The Board's Decision and Order (R. 71–106) are reported in 123 NLRB No. 109. This Court has jurisdiction of these proceedings under Section 10(e) of the Act, the unfair labor practices having occurred in Great Falls, Montana, within this judicial circuit.

STATEMENT OF THE CASE

I. The Board's Finding of Fact

The Board found that respondents,[3] although justified initially in locking out non-striking employees in response to the Union's strike against one member of their multi-employer bargaining unit, violated Section 8(a)(3) and (1) of the Act by thereafter intermittently recalling and again locking out their employees in order to frustrate any rights those employees might have had to receive unemployment insurance.

The facts found by the Board were stipulated by and between counsel for the respondents, the charging party and the General Counsel of the Board (R. 72; 25). Insofar as relevant to the violations found, they are as follows:

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[2] Relevant portions of the Act appear in the Appendix, *infra*, pp. 19–21.

[3] No jurisdictional issue is presented. Jurisdictional facts were stipulated (R. 27–28) and the Board found that respondents were engaged in commerce within the meaning of the Act (R. 72–73, 91).

A. The bargaining impasse

For almost ten years prior to 1957 there had been an established bargaining relationship between the Great Falls Employers' Council, Inc. (hereinafter called Council), as the sole collective bargaining agent for its member employers, and the Retail Clerks International Association, Local Union No. 57, AFL–CIO (hereinafter called Union), as bargaining representative for a unit of sales clerks and checkers composed of the employees of all the members of the Retail Food Dealers Division of the Council (R. 73; 29).

During the course of negotiations for a new contract, the Council and the Union, during the period February 22 to April 12, 1957,[4] met in seven bargaining sessions, three of which were attended by a conciliator from the Federal Mediation and Conciliation Service (R. 73; 31). Although the existing contract expired March 31, the parties by tacit agreement continued to operate within its terms during the subsequent negotiations (R. 74).

On April 12 the Council submitted a "final proposal" which, as slightly amended during a meeting which the conciliator attended, was presented to the Union membership that evening. After voting to reject the proposal, the membership also voted to strike one employer-member of the Council, authorizing its Executive Board to determine which employer would be struck (R. 74; 31). The Union members were warned of the possibility of a lockout by the Council

[4] All dates are 1957 unless otherwise noted.

members not struck and advised that, in that event, the locked-out employees should register with the Montana Employment Service to secure other jobs and to be eligible for unemployment compensation. They were also warned that, under the State law, the strikers would not, and locked-out employees might not, receive unemployment compensation because of the existence of a labor dispute (*Ibid.*).

B. The Union strikes Buttrey. Respondents lockout the non-striking employees, withdraw their final proposal, and renounce the terms of the expired contract

The Union Executive Board designated Buttrey Foods, Inc., as the Division member to be struck. The strike began Saturday, April 12, with picketing limited to the three Buttrey stores. The other member-employers of the Division "acting in concert and pursuant to instructions of their Division" thereupon sent home all the employees in the unit represented by the Union (R. 74–75; 32). In so doing they were prompted by the picketing of the member-employer and their desire "to preserve the unity of their position" (R. 74; 32). Subsequently, Buttrey closed one of its three stores and Safeway (also a member of the Council) closed two of its four stores for the duration of the strike. All other stores remained open despite the strike and lockout (R. 75; 32).

On April 15 the Council informed the Union that the lockout had taken place as a defensive response to the strike and to preserve their interest in group bargaining. The same letter also informed the Union that the "final proposal," rejected by the Union on April 12, was being withdrawn and that the employer

members of the Division would no longer honor the terms of the expired contract, except for the basic hourly rates and certain vacation privileges which would "continue without interruption, in order that the rights of employees shall not be impaired" (R. 47–49).

C. The Council protests unemployment compensation applications of the locked-out employees and institutes an intermittent lock-out plan to assure disqualification of the employees from receiving benefits

On Monday, April 12, most of the locked-out employees registered with the Montana Unemployment Compensation Commission to obtain other jobs and to qualify for unemployment compensation (R. 75–76; 32–33). When given notice of the filing of the claims, the Council filed a protest with the Unemployment Commission on behalf of all the employers against the payment of any benefits to these employees. Payment of unemployment compensation was objected to on the statutory grounds for disqualification,[5] *inter alia,* that "Each of such employees is involved in a work stoppage which exists because of a labor dispute at the establishment where he is employed" (R. 76; 33, 67–69).

The Council considered the employee claims to be an effort to make "an unprincipled use" of the compensation fund as a strike fund. It also considered their possible allowance to be contrary to the declared public purpose of the compensation fund to "benefit persons unemployed through no fault of their own" [6]

[5] 6 Revised Codes of Montana 1947, 1957 Cum. Supp., Section 87–106(d), (R. 52).

[6] *Id.*, Section 87–102 (R. 55–56).

(R. 76, 83; 33; 55–56). Thereafter, without waiting for an initial determination by the Unemployment Compensation Commission of the merits of the claims and the public policy involved, the Council admittedly sought means of effectively preventing payment of the claims pending a time-consuming protest and appeal (*Ibid.*).[7]

For the purpose of effectively disqualifying the locked out employees from receiving unemployment benefits, the employers decided to offer each of them work for a period of more than eight hours which would permit them to earn more than $16 during each week of the lockout (R. 76; 33). That length of employment and amount of earnings was the minimum amount which would disqualify them from benefits under the statute.[8] If the employees accepted the work they would be disqualified because of their employment; if they refused the proffered employment on their own initiative they would be disqualified for having failed to accept available employment; and if they refused at the behest of the Union they would be disqualified as strikers (R. 76; 33–34).

The strategem was put into effect immediately by issuance of a written notice to each locked-out employee, followed up by telephoned reminders, informing him to report to work at a designated time on Friday, April 19. Employees with interim jobs were

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[7] The Council had prevailed in its contentions before the Commission and the Union had appealed the Commission's ruling at the time of submission of this case to the Board (R. 40).

[8] *Id.*, Sec. 87–149(3), (R. 55).

not required to report for work if they chose not to do so. The Union advised its members to return to work as requested (R. 77; 34–35).

The recalled employees were given a full days work on April 19 and such additional work on April 20 as would permit them to earn $16, whereupon they were again laid off. They were candidly informed that the purpose of the interim employment was to render them ineligible for unemployment compensation. Only the employees of Al's Food Market and Wally's Superette were given full-time work when recalled on April 19 (R. 77; 35–38). Although the Union immediately informed the Council by letter delivered April 20 that it would consider that any further locking out of the recalled employees to be an unfair labor practice under the Act (R. 77; 35, 50–51), the employers repeated their strategem the next week by again offering temporary employment for April 26 and 27. On April 27 the employment became regular by virtue of an agreement reached on that date between the Council and the Union and no further locking out took place (R. 77; 39–40).

II. The Board's conclusions and order

Upon the foregoing facts the Board, with two members dissenting, concluded that the April 13 lockout was privileged as a defensive lockout for protection of the multi-employer bargaining unit (R. 81–82). It found, however, that "Respondents' action in locking out their recalled employees on April 20, 1957, was a manipulation of tenure and terms of employment which infringed upon the collective bargaining rights

of these employees and tended to discourage support of the Union and concerted activity for mutual aid and protection, in violation of Section 8(a)(3) and (1) of the Act (R. 86).[9]

To remedy the violation, the Board ordered respondents to cease and desist from the unfair labor practices found (R. 92–93). The order also provides for back pay for the period from April 19 to April 26, for each employee discriminated against (R. 93; 101–103, 106), and for the posting of appropriate notices (R. 93–94; 103–106).

ARGUMENT

The Board properly concluded that the members of a multi-employer bargaining unit, although justified initially in locking out their nonstriking employees in response to the Union's strike against one of their members, violated Section 8(a)(3) and (1) of the National Labor Relations Act by thereafter intermittently recalling and again locking out their employees in order to frustrate any rights those employees may have had to receive unemployment insurance

The Board's finding that respondent's lockout of their employees on April 13 was a lawful defensive measure "to protect the multi-employer unit from disintegration threatened by the Union's tactic of calling a 'whipsaw' strike" (R. 81), but that the subsequent lockout on April 20 was not privileged accords with the principles established by the Board and the

[9] The Board unanimously dismissed complaint allegations that respondents had violated Section 8(a)(5) of the Act by renunciation of prior bargaining commitments (R. 87) and unilateral action in instituting partial reemployment (R. 87–90). On the latter issue, the charge was dismissed because the Union had acquiesed in the unilateral changes (R. 90).

courts in other cases. Whether in a given case an employer, in furtherance of a collective bargaining dispute, may lawfully lock out his employees involves, as the Supreme Court has noted, "a balancing of the conflicting legitimate interests." And the "function of striking that balance to effectuate national labor policy is * * * a difficult and delicate responsibility, which the Congress committed primarily to the National Labor Relations Board, subject to limited judicial review." *N.L.R.B.* v. *Truck Drivers Union (Buffalo Linen Supply Co.)*, 353 U.S. 87, 96. Hence, the Board's accommodation of the conflicting interests is entitled to stand if it is reasonable.[10]

Where a strike would exert an extraordinary pinch upon the employer, it has been held that he may lock out to defend against this extra hazard. He may, for example, temporarily lock out employees in anticipation of a scheduled strike where spoilage of materials would otherwise result (*Duluth Bottling Association,* 48 NLRB 1335, 1336, 1359–1360); because of the difficulties in planning production in the face of recurrent work stoppages (*International Shoe Co.,* 93 NLRB 907); where, because of a union's refusal to promise sufficient advance notice of a threatened strike, new repair work could not be taken with assurance that it would be finished and returned to customers (*Betts Cadillac Olds, Inc.,* 96 NLRB 268); and to prevent atomization of a multi-employer bargaining unit (*N.L.R.B.* v. *Truck Drivers Union, supra*). Where, on the other hand, the action taken by the employer

[10] *N.L.R.B.* v. *Hearst Publications*, 322 U.S. 111, 131; *Gray* v. *Powell*, 314 U.S. 402, 412–413.

exceeds the needs of defense, it is regarded as an unwarranted infringement of employee rights and thus not privileged. Thus, it has been held that employers may not go so far as to discharge their employees in order to preserve the multi-employer bargaining unit (*Morand Bros. Beverage Co.* v. *N.L.R.B.,* 204 F. 2d 529, 534–535 (C.A. 7), certiorari denied, 346 U.S. 909); nor may an employer, prior to an impasse in bargaining and while under no imminent threat of a strike by the union, lock out his employees to gain a bargaining advantage (*Quaker State Oil Refining Corp.* v. *N.L.R.B.,* 270 F. 2d 40 (C.A. 3), certiorari denied, December 7, 1959).

Applying these general principles, we shall show that there is a rational basis for the Board's distinction between the lockouts of April 13 and 20 and its conclusion that the first was a legally permissible defensive measure and that the other was not. The Board reasonably inferred in this case, as in *Truck Drivers, supra* (353 U.S. at 90–91), that " 'although not specifically announced by the Union, the strike against the one employer necessarily carried with it an implicit threat of future strike action against any or all of the other members of the [Council]' with the 'calculated purpose' of causing 'successive and individual employer capitulations'." Respondents' action on April 13 in temporarily locking out the nonstriking employees was only for the purpose of protecting "the multi-employer unit from the disintegration threatened by the Union's tactic of calling a 'whipsaw'

strike against one employer member in support of demands against all" and "was therefore 'defensive and privileged in nature, rather than retaliatory and unlawful'" (R. 81–82). *Truck Drivers, supra* (353 U.S. at 91); *Leonard* v. *N.L.R.B.,* 197 F. 2d 435, 205 F. 2d 355, 357–358 (C.A. 9); *Morand Bros. Beverage Co.* v. *N.L.R.B.,* 190 F. 2d 576, 204 F. 2d 529, 530–531 (C.A. 7), certiorari denied, 346 U.S. 909, rehearing denied, 346 U.S. 940; *N.L.R.B.* v. *Spalding Avery Lumber Co.,* 220 F. 2d 673, 675–676 (C.A. 8); *N.L.R.B.* v. *Continental Baking Co.,* 221 F. 2d 427, 431–432, 437 (C.A. 8).

However, in rehiring their locked-out employees on April 19 and again laying them off the next day as soon as each had earned $16, respondents, as the Board found, "were not seeking to protect their legitimate interest in bargaining on a group basis; indeed, by voluntarily breaking their own lawful lockout, they demonstrated that they did not believe the multi-employer unit was then in any danger from the Union's strike action. This conduct was not defensive in nature, but instead, was patently in retaliation against the concerted, union-directed efforts of these employees to procure unemployment insurance benefits pending settlement of the labor dispute" (R. 82). It "was a manipulation of tenure and terms of employment which infringed upon the collective bargaining rights of these employees and tended to discourage support of the Union and concerted activity for mutual aid or protection in violation of Section 8(a) (3) and (1) of the Act" (R. 86).

Thus, respondents, in asserted justification of their tactic of recalling the locked out employees on April 19 and again locking them out on April 20, contended that they believed, on the basis of prior decisions of the Montana Unemployment Compensation Commission, that the employees might be successful in obtaining unemployment insurance payments unless respondents took steps to prevent the payments and that respondents were only seeking "ways and means of curtailing what they thought to be an unprincipled use" of the Unemployment Compensation fund (R. 33). They admittedly advised the recalled employees "that their reemployment was to circumvent the unemployment compensation" (R. 35). Expanding their position further, respondents asserted in an advertisement issued during the lockout that, "as conducted, the strike attempts to take unfair and illegal advantage of unemployment compensation funds to which as taxpayers we all contribute" (R. 70).

In short, respondents' motivation for the April 20 lockout was quite different from that motivating the April 13 lockout. The lockout was no longer for the purpose of protecting the multi-employer bargaining unit from atomization. It was, instead, for the purpose of preventing the employees from receiving from the State whatever economic assistance that would normally flow from respondents' lawful defensive lockout on April 13 and, incidentally, of preventing any possible increase in respondents' tax rate. Respondents, of course, were privileged to—and did

with success—protest and vigorously prosecute before the Unemployment Commission their claim that the locked out employees were not entitled to unemployment insurance benefits. But they were not privileged to lock out their employees for the purpose of preventing the results which normally would flow from administration by the state of its unemployment insurance laws. The lockout for that purpose was not a lawful economic weapon. It was, rather, "an offensive weapon to better [respondents'] bargaining position and as a result * * * distorted the bargaining process to a degree where [they] obtained an unfair bargaining advantage." *Quaker State Oil Refining Corp.* v. *N.L.R.B.*, 270 F. 2d 40, 45 (C.A. 3), certiorari denied, December 7, 1959.

The April 20 lockout interfered not only with the exercise by the employees of their statutorily protected right to engage in the Union-directed efforts to obtain unemployment insurance,[11] but also with their

[11] As this Court pointed out in *Salt River Valley Water Users' Association* v. *N.L.R.B.*, 206 F. 2d 325, 328, it is immaterial that what the employees sought were payments to which they would be entitled, if at all, as individuals (payments under the Fair Labor Standards Act in that case), for they had concertedly decided to pursue those individual rights and "'concerted activity for the purpose of * * * mutual aid or protection' is often an effective weapon for obtaining that to which the participants, as individuals, are already 'legally' entitled." Accord: *N.L.R.B.* v. *Moss Planning Mill Co.*, 206 F. 2d 557, 559–560 (C.A. 4). The Union in this case not only directed the locked out employees to apply for unemployment insurance but represented them before the Commission and, following denial by the Commission of the employees' claims, appealed the Commission's decision (R. 40).

right to strike.[12] Their right to strike included their right to determine the timing, the scope and the manner of conducting their strike. To be sure, as we have shown, respondents, in the interest of protecting the multi-employer unit, were privileged to lock out the employees not included in the strike call. This was a justifiable defensive step. But when they went further and adopted the tactic of intermittently recalling and again locking out the non-striking employees, their action exceeded what was needed to protect against the direct impact of the Union's activity, and

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[12] The right to strike, of course, is encompassed within the protective scope of Section 7 of the Act, and Section 13 expressly singles out this form of concerted activity for protection by providing that: "Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike * * *" *N.L.R.B.* v. *International Rice Milling Co.*, 341 U.S. 665, 673.

Indeed, the right to strike is fundamental to the exercise by employees of their right to bargain collectively and an interference with their right to strike infringes upon their collective bargaining rights. A strike or threat to strike is the employees' only effective weapon for enforcement of what they conceive to be just demands upon their employer. The employer, on the other hand, except in unusual circumstances, has effective means other than the lockout to protect his bargaining position. To counteract the strike weapon, he has the undoubted "right to protect and continue his business by supplying places left vacant by the strikers." *N.L.R.B.* v. *Mackay Radio & Telegraph Co.*, 304 U.S. 333, 345. And whether or not there is a strike, he may break an impasse in negotiations in his favor, after good faith bargaining, by instituting unilaterally those changes in employment terms which he has offered the employees' bargaining representative and which they have rejected during the negotiations. *N.L.R.B.* v. *Crompton-Highland Mills, Inc.*, 337 U.S. 217, 224–225.

became retaliatory. In sum, respondents attempted to penalize the employees for conducting a limited strike and making a concerted effort, through their Union, to obtain for those not striking any benefits to which they might be entitled under state law and policy.

Moreover, the interest which respondents sought to protect by such action was not sufficient to warrant this interference with employee rights. That is, the Board properly rejected the contention that the lockout was justified in order to protect respondents against the possibility that their tax contributions to the unemployment reserves under the state's experience rating formula might be increased. Any economic detriment in this respect which respondents stood a chance of suffering is both speculative and remote. And, respondents had effective means other than a lockout to protect both the state's unemployment reserves and incidentally, its own tax contribution to those reserves. Montana statutes specifically provided the means by which interested parties might present their contentions with respect to such matters and have them resolved by the Unemployment Compensation Commission, with further opportunity for review in the state courts.[13] Even assuming that the

[13] 6 Revised Codes of Montana, 1947, Sec. 87–108; 1957 Cum. Supp., Sec. 87–107. Respondents, while pursuing these statutory provisions for testing the right of locked out employees to unemployment benefits, took the inconsistent step of disqualifying the employees in any event for these benefits by recalling them each week for $16 worth of work. The Commission, although not required in these circumstances to decide the legal issue initially presented to it, nevertheless did so. Its

locked-out employees were entitled under Montana laws to unemployment benefits and that the lockout might continue for a length of time sufficient to increase respondents' tax contribution to the reserve fund, respondents' economic loss would, in any eventuality, appear to be insubstantial.[14] It is not that type of unusual economic loss which the Board has held in other cases entitles an employer to lock out his employees as a defensive measure. (See examples *supra,* p. 9).

In rejecting an argument that the Board should, in order to complement the public policy of the state, sanction this type of employer interference with the employees' protected concerted activities, the Board pointed out that, depending on how each state construes its applicable statutes, the Board might find itself assisting the employer in circumventing rather than in complementing state policy (R. 85). In short, the Board believes that its power to find and remedy unfair labor practices ought not to "hinge on the myriad provisions of state unemployment compensation laws." *Gullet Gin Co.* v. *N.L.R.B.,* 340 U.S. 361, 365. If, as the Supreme Court held in *Gullet Gin,* the Board may properly refuse to permit an employer to deduct from back pay due discriminatorily discharged

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ruling that the employees locked out as a defense to the Union's "whipsaw" strike were involved in a labor dispute and therefore not entitled to unemployment benefits (R. 64–65) was, at the time the matter was presented to the Board, pending in an appropriate state court on appeal by the Union (R. 40).

[14] See, 6 Revised Codes of Montana (1959 Cumulative Pocket Supp.), Sec. 87–109; and 26 USCA, Sec. 3301–3302.

employees the amounts of unemployment benefits received by them on the ground that those benefits were not direct but only collateral,[15] it would seem that the Board may, by analogy, properly find that respondents' interest in these collateral benefits is not so great as to warrant respondents' interference with the employees protected concerted activity in attempting to obtain these benefits and in pursuing their strike plans. In any event, at the Board stated, here as in the *Gullet Gin* case, "any failure of respondent[s] to qualify for a lower tax rate would not be primarily the result of federal but of state law, designed to effectuate a public policy with which it is not the Board's function to concern itself." (*Id.*, at 365).

For the foregoing reasons, we submit that the Board gave proper weight to the "conflicting legitimate interests" of the parties, and that under the facts of this case, it reasonably concluded that respondents' action in locking out their recalled employees on April 20 constituted discrimination against them which infringed upon their collective bargaining rights and tended to discourage support of the Union and con-

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[15] In this connection the Court stated (340 U.S., at 364:

"But respondent argues that the benefits paid from the Louisiana Unemployment Compensation Fund were not collateral but direct benefits. With this theory we are unable to agree. *Payments of unemployment compensation were not made to the employees by respondent* but by the state out of state funds derived from taxation. True, these taxes were paid by employers, and thus to some extent respondent helped to create the fund. However, the payments to the employees were not made to discharge any liability or obligation of respondent, but to carry out a policy of social betterment for the benefit of the entire state." (Emphasis supplied.)

certed activity for their mutual aid or protection, in violation of Section 8(a)(3) and (1) of the Act (R. 86).

CONCLUSION

It is respectfully submitted that a decree should issue enforcing the Board's order in full.

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DECEMBER 1959.

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Secs. 151, *et seq.*), are as follows:

Rights of Employees

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

Unfair Labor Practices

Sec. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization:

* * * * *

Prevention of Unfair Labor Practices

Sec. 10(a) The Board is empowered, as hereinafter provided, to prevent any person

from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: * * *

* * * * *

(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: * * *

* * * * *

(e) The Board shall have power to petition any court of appeals of the United States, or if all the courts of appeals to which application may be made are in vacation, any district court of the United States, within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying, and

enforcing as so modified, or setting aside in whole or in part the order of the Board.

* * * * *

LIMITATIONS

SEC. 13. Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

U.S. GOVERNMENT PRINTING OFFICE: 1959